

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 301(j))	
of the Telecommunications Act of 1996)	CS Docket No. 96-57
)	
Aggregation of Equipment Costs)	
By Cable Operators)	DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF GENERAL INSTRUMENT CORPORATION

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TABLE OF CONTENTS

	PAGE NO.
INTRODUCTION AND SUMMARY.....	1
I. NJ'S PROPOSAL TO DEFINE "LEVEL OF FUNCTIONALITY" IS SQUARELY AT ODDS WITH THE STATUTE.....	3
II. NJ AND NY'S PROPOSALS TO LIMIT GEOGRAPHICAL AVERAGING TO AN INTRASTATE LEVEL ARE INCONSISTENT WITH THE STATUTE AND WILL CREATE MARKETING, REGULATORY, AND ADMINISTRATIVE INEFFICIENCIES.....	5
III. THE COMMISSION, NOT LFAS, SHOULD REVIEW CABLE OPERATORS' IMPLEMENTATION OF EQUIPMENT AVERAGING.....	7
CONCLUSION.....	8

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General Instrument Corporation ("GI") hereby submits its reply comments on the Notice in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

The comments on the Notice set forth legal and policy analyses that overwhelmingly support implementation of equipment averaging rules which:

- Adopt the 1996 Act's "broad categories" test for equipment cost averaging rather than the "primary purpose" test;²

¹ In the Matter of Implementation of Section 301(j) of the Telecommunications Act of 1996, Aggregation of Equipment Costs, CS Docket No. 96-57, FCC 96-117 (released March 20, 1996) ("Notice").

² GI Comments at 5-8; NCTA Comments at 3-6; Telecommunications Industry Association Comments at 3 ("TIA Comments"); TCI Comments at 4-8; Time Warner Comments at 3.

- Establish the existing customer equipment categories for converter boxes, remotes, and inside wiring as the initial broad categories, and maximize cable operator flexibility to broaden these categories in the future to include new equipment as technology evolves;³
- Make clear that the basic-only exception applies to basic-only customers, not to basic-only equipment. In fact, "basic-only equipment" is a misnomer in that equipment used by basic-only customers is often also used by non-basic-only customers, and vice versa;⁴
- Allow geographic averaging at the franchise, system, regional, and company level for all customer equipment, and apply this rule to equipment used by basic-only subscribers, as well as to installation costs;⁵
- Clarify that customer equipment used with additional outlets may be included in the same broad category for averaging purposes as customer equipment used with initial connections;⁶ and
- Establish the Commission as the point of review for cable operators' implementation of equipment averaging.⁷

Only two commenters - the New York Department of Public Service ("NY") and the New Jersey Division of the Ratepayer Advocate ("NJ") -- oppose any of the proposals listed above. In

³ GI Comments at 5-6; NCTA Comments at 4; TCI Comments at 4-6; Time Warner Comments at n. 5.

⁴ GI Comments at 8; NCTA Comments at 7; TCI Comments at 15-16.

⁵ GI Comments at 9-10; NCTA Comments at 6-9; TCI Comments at 8-15; 20-22; TIA Comments at 3-4; Time Warner Comments at 3-7.

⁶ GI Comments at 10-12; TCI Comments at 24-25; TIA Comments at 3-4.

⁷ NCTA Comments at 9-13; Time Warner Comments at 8-9.

these reply comments, GI answers these comments and demonstrates that each of the points raised by NJ and NY are directly contrary to the 1996 Act and/or are fundamentally unsound as a policy matter.

I. NJ'S PROPOSAL TO DEFINE "LEVEL OF FUNCTIONALITY" IS SQUARELY AT ODDS WITH THE STATUTE.

NJ asks the Commission to define "level of functionality" in order to distinguish equipment and to limit equipment averaging. NJ suggests that such a definition is needed, for example, to make clear that addressable and non-addressable converters cannot be included in the same broad category for averaging purposes.⁸

The Commission must reject this proposal, as it is squarely at odds with section 301(j) of the Act which authorizes cable operators to broadly average equipment costs, "regardless of the varying levels of functionality of the equipment within each such broad category" (emphasis added).⁹ As Congress recognized and as the NJ addressable/non-addressable example illustrates, such an inquiry into the level of functionality will serve only to limit equipment averaging, thereby undermining Congress's goals of

⁸ NJ Comments at 2.

⁹ In fact, as GI noted in its comments, the 1996 Act specifically identifies "converter boxes" as an example of a broad category for averaging purposes. See 1996 Act § 301(j).

reducing consumer costs for new equipment and streamlining the deployment of advanced technology.¹⁰

Not only would any attempt to define "level of functionality" be impermissible as a legal matter, it would also be injudicious as a policy matter in light of the rapid development of technology and the increasingly multi-purpose nature of customer equipment. In such a dynamic and complex environment, defining a piece of multi-purpose equipment's functionality level will be elusive at best and will be further complicated by the fact that subscribers' use of this equipment may vary considerably from household to household. The much more logical approach and the one that is mandated by the statute is to categorize customer equipment for averaging purposes based on broad equipment types (such as converters and remotes) and to avoid any inquiry into the level of functionality within each piece of equipment.¹¹ In short, any inquiry into the level of functionality, such as that proposed by NJ, will simply deprive consumers of the full benefits of the equipment averaging provision, principally lower prices for advanced technology.

¹⁰ H.R. Rep. 204, 104th Cong., 1st Sess. 107-108 (1995).

¹¹ Accord TCI Comments at n. 7.

II. NJ AND NY'S PROPOSALS TO LIMIT GEOGRAPHICAL AVERAGING TO AN INTRASTATE LEVEL ARE INCONSISTENT WITH THE STATUTE AND WILL CREATE MARKETING, REGULATORY, AND ADMINISTRATIVE INEFFICIENCIES.

NJ proposes that the Commission limit geographical averaging to a statewide basis.¹² However, the Act expressly prohibits the Commission from doing so. Section 301(j) clearly authorizes cable operators to geographically average their equipment costs on a franchise, system, regional, or company level.¹³ NJ's attempt to reargue what Congress has already decided must be rejected.

The Commission also should reject NJ and NY's proposals to limit installation cost averaging.¹⁴ The record demonstrates that the rate variances caused by broad installation cost averaging with respect to both lease rates and installation rates will be de minimis.¹⁵ Moreover, the benefits in terms of the increased marketing, regulatory, and administrative efficiencies more than justify affording cable operators the flexibility to aggregate their installation costs at the same level as their equipment costs.¹⁶

¹² NJ Comments at 6-8.

¹³ 1996 Act § 301(j).

¹⁴ NJ Comments at 8-9; NY Comments at 4.

¹⁵ TCI Comments at 13-15.

¹⁶ See GI Comments at 9-10 for a discussion of the efficiencies produced by geographic averaging. GI also agrees with NCTA and TCI that allowing cable operators to average

(continued ...)

Finally, NJ's position on geographic averaging of equipment used by basic-only subscribers appears to be internally inconsistent,¹⁷ and, to the extent NJ seeks to limit geographic averaging of such equipment to the state level, it also is inconsistent with congressional intent.¹⁸ It should therefore be rejected.

In short, each of the proposals by NJ and NY to limit geographic averaging would serve only to deprive consumers of the full benefits of the equipment averaging provision, principally the marketing and pricing efficiencies that would accompany the operator's ability to price equipment uniformly across broader geographic regions. The Commission should refrain from implementing any such restrictions, and instead should afford

(... continued)

"substantially similar" installation costs would not cure these problems and may introduce additional complexities. See NCTA Comments at n. 9; TCI Comments at n. 13.

¹⁷ NJ states on the one hand that it "does not object to the aggregation of basic-service only equipment on a franchise, system, regional, or company level" but on the other hand insists that "such aggregation should be limited to an intrastate level." NJ Comments at 10.

¹⁸ See Notice at ¶ 13 (recognizing that Congress did not intend to limit geographic averaging of equipment used by basic-only subscribers). Moreover, NJ's attempt to condition broader geographic averaging of equipment used by basic-only subscribers on a requirement that "all franchise areas require the same customer equipment to receive basic service" (NJ Comments at 10) overlooks the fundamental fact that there is no such thing as basic-only equipment.

cable operators the maximum flexibility to geographically average equipment prices.

III. THE COMMISSION, NOT LFAS, SHOULD REVIEW CABLE OPERATORS' IMPLEMENTATION OF EQUIPMENT AVERAGING.

The comments of NJ and NY demonstrate the difficulty of LFA review of equipment rates under an equipment averaging regime. In fact, at one point, NJ states, "Since states differ with regard to their regulatory structures, it would be difficult to review and approve rates for service areas aggregated at multi-state levels."¹⁹ The solution to this difficulty is not, however, to ignore Congress's clear directives and limit equipment averaging to a state level, but rather to have the Commission, rather than LFAs, review cable operators' implementation of equipment averaging. GI concurs with NCTA that the cross-jurisdictional issues implicated by equipment averaging will be more efficiently resolved at the Commission level.²⁰

¹⁹ NJ Comments at 6.

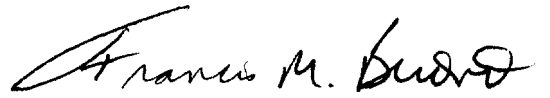
²⁰ NCTA Comments at 12. See also Time Warner Comments at 8-9. While NJ "objects to any FCC proposal or 'alternative' which would remove states' and localities' existing authority to review subscriber rates," it provides no legal or policy analysis as to why jurisdiction at the local level is either required or preferable in an equipment averaging regime.

CONCLUSION

Based on the foregoing, GI respectfully requests that the Commission adopt flexible equipment averaging rules consistent with the comments herein and with GI's initial comments.

Respectfully submitted,

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